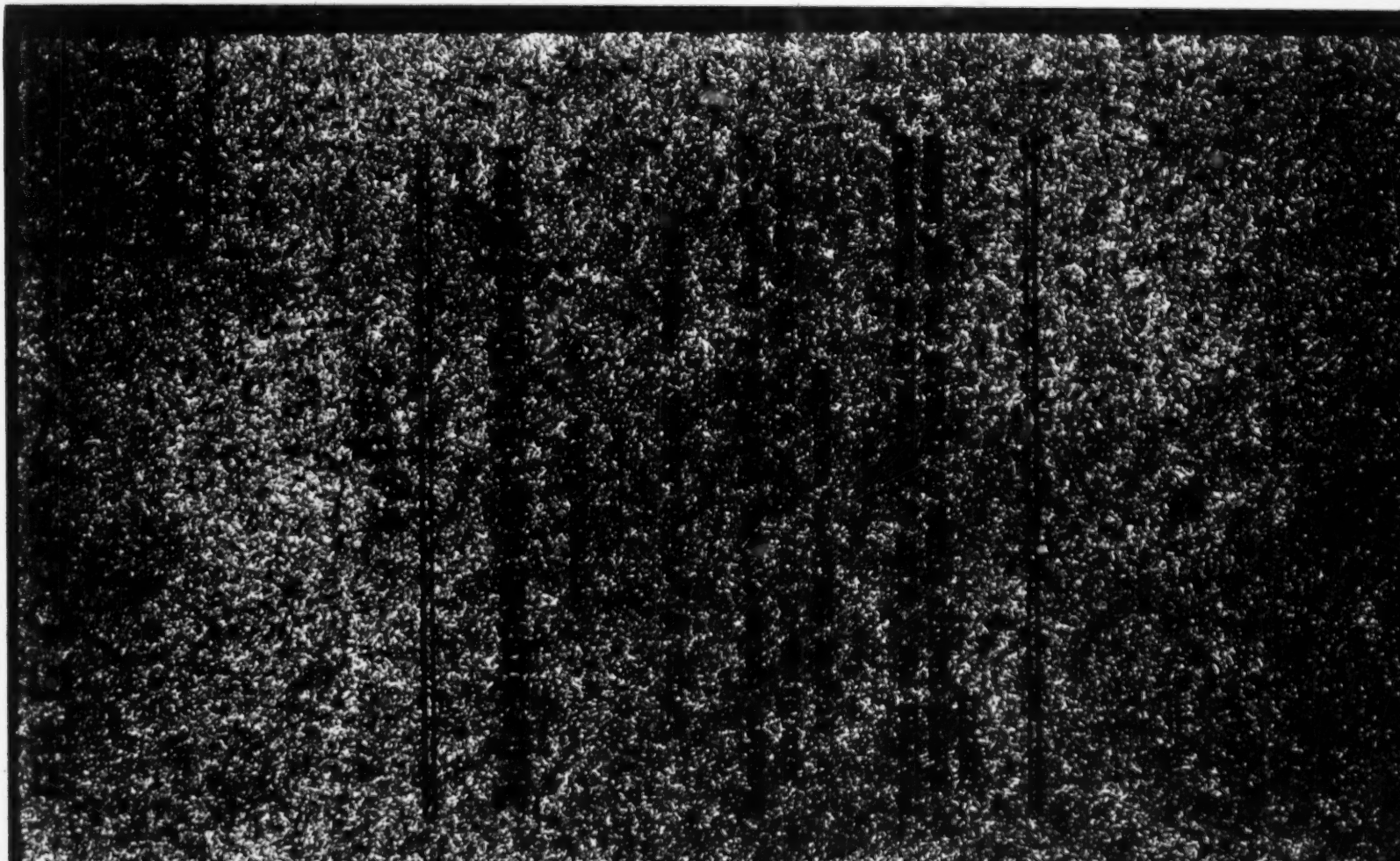


INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statement	2
Specification of errors to be urged	4
Reasons for granting the writ	5

CITATIONS

Cases:	
Broderick v. *Rosner*, 294 U. S. 629	6
Canada Southern Ry. v. *Gebhard*, 109 U. S. 527	6
Clark v. *Williard*, 292 U. S. 112	7
Martyne v. *American Union Fire Ins. Co.*, 216 N. Y. 183	7
Modern Woodmen v. *Mixer*, 267 U. S. 544	6
Oklahoma Gas Co. v. *Oklahoma*, 273 U. S. 257	6
Relfe v. *Rundle*, 103 U. S. 222	7
Royal Arcanum v. *Green*, 237 U. S. 531	6
United States v. *Bank of New York & Trust Co.*, 296 U. S. 463	5
Miscellaneous:	
Restatement of the Law of Conflict of Laws, Sec. 161	7, 8

106140—38

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

MORGAN BELMONT AND ELEANOR R. BELMONT, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF AUGUST BELMONT, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Second Circuit entered in the above case on August 17, 1936, affirming the judgment of the United States District Court for the Southern District of New York.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 35–37) is not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 49–52) is reported in 85 F. (2d) 542.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Second Circuit was entered August 17, 1936 (R. 52). The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether decrees of the Soviet Government dissolving a Russian corporation, appropriating all of its assets, and terminating all rights of creditors and stockholders therein, will be given effect in the United States so as to transfer to the Soviet Government title to a bank deposit in New York forming part of the assets of such corporation.

2. Whether, in determining this question, the public policy of the State of New York controls, where the Soviet Government has assigned the title to such assets to the United States by international agreement.

STATEMENT

The Kompania Petrogradskago Metallicheskago Zavoda (Petrograd Metal Works) was prior to 1918 a corporation organized and existing under the laws of Russia where it conducted a metallurgical and metal manufacturing business (R. 6). It had a deposit of $25,438.48 with August Belmont & Company under which firm name and style August Belmont carried on a private banking business in the Borough of Manhattan, City of New York, until

his death December 10, 1924 (R. 6). On December 29, 1924, the Surrogate's Court of Nassau County issued letters testamentary to the respondents, Morgan Belmont and Eleanor R. Belmont, and they have since been in possession of this fund (R. 8). In 1918, the Government of Russia decreed the dissolution, termination, and liquidation of certain Russian corporations, including the Petrograd Metal Works, and nationalized and appropriated the assets thereof (R. 7). On or about November 16, 1933, an executive agreement was concluded by an exchange of diplomatic correspondence between the President of the United States and M. Litvinov, People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics. The Soviet Government released and assigned to the United States Government all amounts due or that might be found to be due the Soviet Government from American nationals, including the bank deposit with Belmont & Company. The assignment stated that it was made "preparatory to a final settlement of the claims and counterclaims" between the two governments and the claims of their nationals (R. 8–9, 25).

On or about June 18, 1935, the petitioner demanded from the respondents the payment of $25,438.48, formerly standing to the credit of the metal company with the August Belmont Company, and the respondents have failed to comply with this demand. Suit was instituted by the United States for the recovery of this fund. Defendants moved

to dismiss the complaint for failure to state a cause of action. The motion was granted and the United States appealed. On appeal the United States Circuit Court of Appeals for the Second Circuit affirmed the judgment of the District Court, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The United States urges that the Circuit Court of Appeals for the Second Circuit erred:

(1) In holding that the nationalization decree of the Soviet Government did not have the effect of transferring to that Government title to the intangible personal property of the former Petrograd Metal Works in the United States.

(2) In holding that diplomatic recognition of the Government of the Union of Soviet Socialist Republics by the Government of the United States did not require the courts of the United States to give full force and effect to the said decree of the Soviet Government as to personal property wherever located.

(3) In holding that by the decree of nationalization the Soviet Government did not become the statutory successor of the former Petrograd Metal Works and entitled to immediate possession of all of its assets, including the bank deposit.

(4) In holding that enforcement of the decree of the Soviet Government dissolving the former Petrograd Metal Works and nationalizing and appropriating all of its properties, including the said

bank deposit, is controlled by the public policy of the State of New York.

(5) In failing to hold that the bank deposit in question had a *situs* in Russia for the purposes of this case.

(6) In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The questions here presented are substantially identical with the questions on the merits presented but not passed upon in *United States* v. *Bank of New York and Trust Co.*, 296 U. S. 463. In that case the Court stated that the writ of certiorari had been granted "because of the nature and importance of the questions presented." 296 U. S. at 471.[1] Since substantially the same questions are again presented in this case and as these questions have not yet been determined, the Court should grant the writ of certiorari prayed for herein.

The court below, while accepting the allegations of the complaint that the Soviet decrees terminated

---

[1] The Court, in holding that the Federal courts had no jurisdiction of the particular suits, pointed out that the United States could invoke the jurisdiction of the state court "and the decision of the state court of any federal question which may be presented upon such an invocation, may be reviewed by this Court and thus all the questions which the Government seeks to raise in these suits may be appropriately and finally decided." 296 U. S. at 479.

It is to be noted that no jurisdictional question is presented in the case at bar.

the existence of the metal company and transferred all of its property in Russia to the Soviet Government, held that these decrees should not be given effect with respect to corporate property in the United States. This decision runs counter to the generally accepted principles governing the relations of a sovereign to its corporations and their property.

A State which creates a corporation likewise has the power to dissolve it, *Oklahoma Gas Co.* v. *Oklahoma,* 273 U. S. 257, and the law of the State of incorporation governs the relationship between a corporation and its creditors and shareholders. *Canada Southern Ry.* v. *Gebhard,* 109 U. S. 527; *Royal Arcanum* v. *Green,* 237 U. S. 531; *Modern Woodmen* v. *Mixer,* 267 U. S. 544; *Broderick* v. *Rosner,* 294 U. S. 629. In the *Gebhard* case, this Court stated (at p. 537):

> Whatever disabilities are placed upon the corporation at home it retains abroad, and *whatever legislative control it is subject to at home must be recognized and submitted to by those who deal with it elsewhere.* A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia,* 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and *subject to all the legislative control and direction that may be*

> *properly exercised over it at the place of its creation.* Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and *whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him.* He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony. [Italics supplied.]

It has long been settled that upon the dissolution of a corporation the person designated by the law of the State of incorporation to take title to the assets of the dissolved corporation becomes entitled to bring suit in his own name for such assets, wherever located. *Clark* v. *Williard,* 292 U. S. 112; *Relfe* v. *Rundle,* 103 U. S. 222; *Martyne* v. *American Union Fire Ins. Co.,* 216 N. Y. 183; Restatement

of the Law of Conflict of Laws, Sec. 161.[2] We submit that the same principle should apply where a foreign sovereign dissolves a corporation and takes title to all the assets of the corporation in its own sovereign capacity, and that consequently the decision of the court below is in conflict with well established doctrine.

The court below in refusing to give effect to the Soviet decrees held itself bound by what it conceived to be the public policy of the State of New York. It is submitted that the public policy of an individual state is inoperative in a matter involving the international relations of the United States. Prior to the recognition of the Soviet Government and the assignment to the United States of claims arising out of the nationalization decrees, the individual States were free to apply their own policy as to whether such decrees should be given effect. However, after the recognition and the assignment, the effectiveness of these decrees, with respect to property covered by the assignment, became a matter of national and international concern. If any concept of public policy can stand in the way of

---

[2] Section 161 provides: "If a statute of the state of incorporation which is in force at the time of the dissolution of a corporation provides that all its assets shall, upon dissolution pass to a person designated in the statute, the right of such person to the personal property, wherever situated and whether tangible or intangible, will be recognized and given effect by other states, and the designated person can bring suit in any state upon claims due to the corporation."

their enforcement it must only be some public policy of the United States, not that of any individual State. It would be impracticable and probably fatal to the proper exercise by the Executive of his constitutional power in the field of foreign relations, if each of the forty-eight States were permitted to superimpose its own local policy with respect to matters which have been made the subject of international agreement.

It is submitted that the executive branch of the Government, by the Chief Executive, has, by the formal negotiation of the assignment, in effect declared what is the public policy of the United States with regard to the decrees of the Soviet Government in so far as they relate to property covered by the assignment.

There are now pending in the state courts or lower Federal courts about fifteen suits, involving approximately $8,000,000, in which suits the United States Government is claiming under the assignment by the Soviet Government. These suits involve the same fundamental issue as is presented in the case at bar. A determination of this issue will therefore be of great practical significance.

As part of the diplomatic negotiations which resulted in the recognition of the Soviet Government, the latter assigned to the United States Gov-

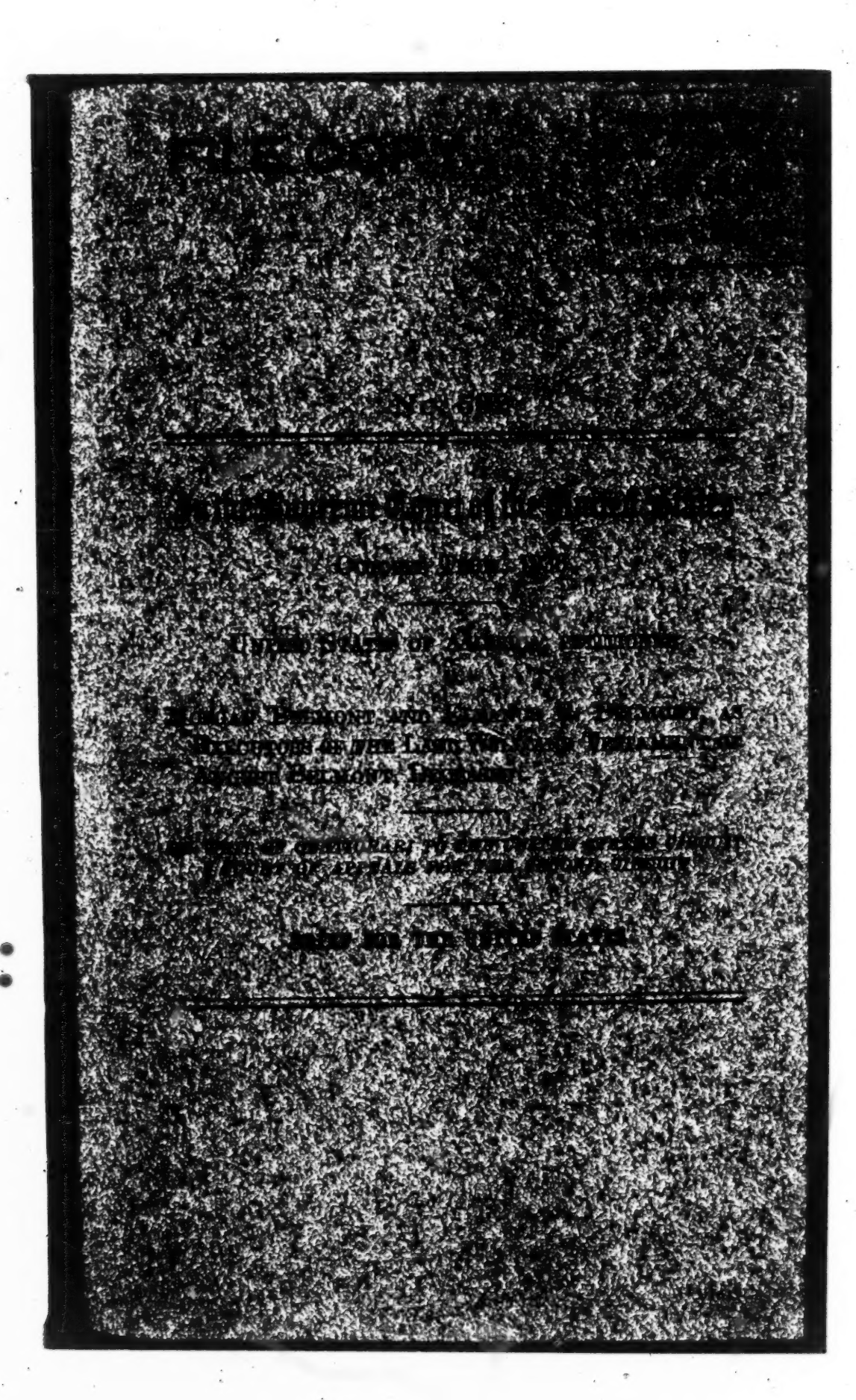
ernment numerous claims, including the one here in suit, "*preparatory to a final settlement of the claims and counterclaims" between the two Governments, and the claims of their nationals.* (R. 25.) The fundamental issue in this case is whether this assignment is to be given the effect intended by the contracting parties. If the title of the Soviet Government to the property involved in this and similar cases arising under the assignment cannot be sustained, it will have a serious effect on the future settlement of international claims now outstanding between the two Governments and their nationals. To subject the title of the Soviet Government, and the claim herein asserted by the United States Government, to the varying and uncertain policies of each of the States would embarrass, if not defeat, any attempt to arrive at a settlement of these international questions. Thus there is involved a matter of high public and international importance which should be determined by this Court.

Wherefore it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

NOVEMBER 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936



INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Executive agreement and statute involved	2
Statement	3
Specification of errors to be urged	4
Summary of Argument	5
Argument:	
Introduction	12
I. The right to receive the amount of the bank deposit was governed by Russian law and was validly acquired by petitioner's assignor	16
II. There is no public policy which prevents the enforcement of petitioner's claim	32
A. The public policy of the United States	32
B. The public policy of New York	37
C. Section 977-b of the New York Civil Practice Act	42
D. The application of New York public policy in Federal courts, and to matters of national concern	48
Conclusion	52
Appendix:	
I. Agreement concluded November 16, 1933, between the President of the United States and the People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics	53
II. New York Civil Practice Act (Laws of New York, 1936, c. 917, sec. 977-b)	56

CITATIONS

Cases:	
Anziani, Matter of (1930), 1 Ch. 407	22
Bank of Augusta v. *Earle*, 13 Pet. 519	27
B. & W. Taxicab Co. v. *B. & P. Taxicab Co.*, 276 U. S. 518	49
Blodgett v. *Silberman*, 277 U. S. 1	24
Bockover v. *Life Association of America*, 77 Va. 85	31
Boyce v. *Tabb*, 18 Wall. 546	11, 49
Canada Southern Ry. v. *Gebhard*, 109 U. S. 527	7, 27
Chicago, Rock Island & P. Railway v. *Sturm*, 174 U. S. 710	6, 16